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Filing date: **01/19/2016**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91225687
Party	Plaintiff Mary's Gone Crackers, Inc.
Correspondence Address	ANNA E RAIMER JONES DAY 717 TEXAS AVENUE, SUITE 3300 HOUSTON, TX 77002 UNITED STATES aeraimer@jonesday.com
Submission	Response to Board Order/Inquiry
Filer's Name	Lauren Refinetti
Filer's e-mail	lrefinetti@jonesday.com, aeraimer@jonesday.com, NYTEF@jonesday.com
Signature	/Lauren Refinetti/
Date	01/19/2016
Attachments	Conscious Cook Response to Board Communication with Exhibits.pdf(576595 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE
TRADEMARK TRIAL AND APPEAL BOARD**

MARY’S GONE CRACKERS, INC.,

Opposer,

v.

JASMIN BECKETT,

Applicant.

Application Serial No. 86/588,571

Opposition No. 91225687

**RESPONSE TO JANUARY 6, 2016 BOARD COMMUNICATION AND REQUEST FOR
INSTITUTION OF OPPOSITION**

Mary’s Gone Crackers, Inc. (“Mary’s Gone Crackers” or “Opposer”) hereby responds to the Trademark Trial and Appeal Board (“Board”) Communication dated January 6, 2016 [Doc. 6], and requests the Board to accept and institute Opposition No. 91225687. Mary’s Gone Crackers further requests that all filing fees be charged to Deposit Account No. 500566.

I. BACKGROUND

An Extension of Time to Oppose was timely filed on September 11, 2015, and a second Extension of Time was timely filed on October 22, 2015. Both extensions were granted. Prior to filing the Notice of Opposition, Opposer sent several letters to the applicant, Jasmin Beckett (“Applicant”), regarding Application Serial No. 86/588,571. Having received no response, Mary’s Gone Crackers filed an Opposition on the day of the original deadline, December 23, 2015. On that day, however, there was an outage of the United States Patent and Trademark Office (“USPTO”) online filing system. As such, Mary’s Gone Crackers was unable to electronically file its Notice of Opposition.

Mary's Gone Crackers contacted the USPTO via email to <TEAS@uspto.gov> to alert them of the outage, as recommended on the website, and included the deposit account number cited above, as well as a copy of the Opposition. In the email, Mary's Gone Crackers also informed the USPTO that it would be faxing a copy of the Opposition, and requested confirmation that this would be sufficient for filing by the deadline. Opposer sent the Opposition via fax to the Commissioner for Trademarks at 571-273-0029 and received confirmation of its delivery. *See Exhibit A.* Opposer also served Applicant with a copy of the Opposition on this day.

Via an email response after 5:00 pm on December 23rd, the USPTO informed counsel for Mary's Gone Crackers that neither email nor fax would suffice, and that the Opposition should be filed by mail. The next morning, on December 24, 2015, Opposer mailed the Opposition, along with the email correspondence with the USPTO, which included the deposit account number, to the following address:

Commissioner Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

A copy of the exact contents of the mailing sent to this address is attached as Exhibit B.

On December 24, 2015, the USPTO announced on its website that December 22-24 would be considered federal holidays due to the outage. Mary's Gone Crackers' Notice of Opposition was confirmed delivered on December 24, 2015. *See Exhibit C.* As such, the Notice of Opposition was timely filed before the deadline of December 28, 2015.

On January 6, 2016, Opposer received a Board Communication [Doc. 3], advising that the Opposition would be denied and the papers returned due to failure to include the filing fee with the Opposition.

II. REQUEST

Mary's Gone Crackers respectfully requests that the above-captioned Opposition be instituted. No physical payment was included with the Opposition because Opposer instructed the USPTO to charge its deposit account. The deposit account number was specifically included in the papers sent to the Commissioner of Trademarks.

The requested action will not prejudice Applicant because Applicant was served with the Notice of Opposition on December 23, 2015.

Based on the foregoing, Mary's Gone Crackers respectfully asks the Board to institute Opposition No. 91225687 and charge the filing fee to Deposit Account No. 500566.

Dated: January 19, 2016

Respectfully submitted,

By: /Lauren Refinetti/

Lauren L. Refinetti
JONES DAY
2727 North Harwood Street
Dallas, Texas 75201-1515
Telephone: 214.220.3939
Facsimile: 214.969.5100
E-mail: lrefinetti@JonesDay.com

Anna E. Raimer
JONES DAY
717 Texas Ave., Suite 3300
Houston, Texas 77002
Telephone: 832.239.3786
Facsimile: 832.239.3600
Email: aeraimer@JonesDay.com

Attorneys for Opposer
MARY'S GONE CRACKERS, INC.

CERTIFICATE OF SERVICE

It is hereby certified that a copy of the foregoing document has been served upon Applicant by mailing said copy on January 19, 2016, via First Class Mail, postage prepaid at the correspondence address of record in the Patent and Trademark Office:

JASMIN C BECKETT
20 WENDELL ST
HEMPSTEAD, NY 11550-1206

/Lauren Refinetti/
Lauren L. Refinetti

EXHIBIT A



Your fax has been successfully sent to Filing Desk at 1-571-273-0029.

Jones Day Fax to: lwood

12/23/2015 05:03 PM

History:

This message has been forwarded.

1 attachment



MTHNFAX_9b8c93c0-512c-4fed-a45e-a6df3a46c629.PDF

Your fax has been successfully sent to Filing Desk at 1-571-273-0029.

From: Wood, LuAnn

Client: 006502

Matter: 134035

12/23/2015 6:01:06 PM Transmission Record

Sent to 15,006502134035,9,15712730029 with remote ID "5712730029"

Result: (0/339;0/0) Successful Send

Page record: 1 - 7

Elapsed time: 01:50 on channel 6



Facsimile Transmission

2727 North Harwood Street • Dallas, TX 75201-1515 • 214/220-3939
Facsimile: 214/969-5100

Please hand deliver the following facsimile to:

To: Filing Desk
Company:
Fax: 1-571-273-0029

Date: 12/23/2015 6:01:00 PM
Pages: 7

From: Wood, LuAnn
Phone: +1.214.969.5218

Message:

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Please call the sender immediately if the facsimile you receive is incomplete or illegible.

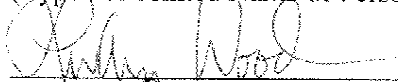
ALHKOBAR • AMSTERDAM • ATLANTA • BEIJING • BOSTON • BRUSSELS • CHICAGO • CLEVELAND • COLUMBUS • DALLAS • DUBAI • DETROIT
DÜSSELDORF • FRANKFURT • HONG KONG • HOUSTON • IRVINE • JEDDAH • LONDON • LOS ANGELES • MADRID • MEXICO CITY
MIAMI • MILAN • MOSCOW • MUNICH • NEW YORK • PARIS • PERTH • PITTSBURGH • RIYADH • SAN DIEGO
SAN FRANCISCO • SÃO PAULO • SHANGHAI • SILICON VALLEY • SINGAPORE • SYDNEY • TAIPEI • TOKYO • WASHINGTON

CERTIFICATE OF TRANSMISSION

I hereby certify that this correspondence is being facsimile transmitted to the United States Patent and Trademark Office on the date shown below.

LuAnn Wood

(Typed or Printed Name of Person Signing Certificate)



(Signature)

December 23, 2015

(Date)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE
TRADEMARK TRIAL AND APPEAL BOARD**

MARY'S GONE CRACKERS, INC., Opposer, v. JASMIN BECKETT, Applicant.	Application Serial No.: 86/588,571 Opposition No. _____ Filing Date: April 6, 2015 Publication Date: August 25, 2015 Trademark: CONSCIOUS COOK EAT BETTER FEEL BETTER LIVE BETTER & Design International Class: 29
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NOTICE OF OPPOSITION

Opposer Mary's Gone Crackers, Inc. ("Opposer" or "Mary's Gone Crackers"), a Delaware corporation, having an address of P.O. Box 965, Gridley, California 95948, believes that it will be damaged by registration of the proposed mark CONSCIOUS COOK EAT BETTER FEEL BETTER LIVE BETTER & Design as set forth in Application Serial No. 86/588, 571 (the "CONSCIOUS COOK" Mark), and therefore opposes registration of the same.

The grounds for opposition are as follows:

1. Mary's Gone Crackers manufactures, promotes, markets, advertises, distributes, and sells organic, gluten free, vegan baked goods, including cookies and crackers. In connection therewith, and since at least as early as 2007, Mary's Gone Crackers has used its mark "CONSCIOUS EATING" (the "CONSCIOUS EATING Mark") in commerce in the United States, including on its website, marketing materials, and packaging of its food products.
2. Mary's Gone Crackers has prominently and extensively promoted and advertised its award-winning products bearing the CONSCIOUS EATING Mark, expending significant resources in connection with such advertising and promotional efforts and building a valuable

business based on the high demand for its healthy, organic, gluten free, vegan baked goods sold under the CONSCIOUS EATING Mark.

3. As a result of Opposer's continuous and extensive use, advertising, and promotion of the CONSCIOUS EATING Mark, as well as the distinctiveness of the mark, the CONSCIOUS EATING Mark has become well-known, and consumers have come to recognize the CONSCIOUS EATING Mark as uniquely associated with Mary's Gone Crackers and an indication of origin.

4. Mary's Gone Crackers has a valid and incontestable U.S. trademark registration, Reg. No. 3525460, for its CONSCIOUS EATING Mark in Class 30, for "baked goods, namely, cookies, crackers, cracker crumbs," as well as an application for the mark, Serial No. 86/560,845, in Class 30 for "pretzels."

5. Trademark Application Serial No. 86/588,571 (the "Application") filed by Jasmin Beckett ("Applicant"), an individual with an address of 20 Wendell Street, Hempstead, NY 11550, seeks registration of the CONSCIOUS COOK Mark.

6. The Application was filed on April 6, 2015, based on Lanham Act Section 1(a), alleging first use of the mark in U.S. commerce on October 14, 2014, for "combined fruit and vegetable purees" in International Class 29.

7. The Application was published for opposition in the *Trademark Official Gazette* on August 25, 2015. Mary's Gone Crackers timely filed an extension of the opposition period to December 23, 2015.

8. Mary's Gone Crackers has used its CONSCIOUS EATING Mark on goods in International Class 30 well before the October 14, 2014 first use date alleged in the Application.

9. Applicant is not affiliated with or sponsored by Opposer, and Applicant has never been authorized by Opposer to use the CONSCIOUS EATING Mark.

10. Applicant's alleged CONSCIOUS COOK Mark is very similar in appearance, sound, and commercial impression to Opposer's CONSCIOUS EATING Mark. As such, consumers are likely to be confused, mistaken or deceived into the belief, contrary to fact, that the International Class 29 goods offered under the proposed CONSCIOUS COOK Mark emanate from and/or are in some way sponsored or approved by Opposer, and/or that Applicant is somehow affiliated with Opposer, thereby damaging Opposer.

11. In addition, the goods identified in the Application are related to the goods sold by Opposer under its CONSCIOUS EATING Mark and covered by Opposer's trademark registration for the CONSCIOUS EATING Mark.

12. The goods identified in the Application are also likely to be sold to the same or overlapping classes of purchasers and trade channels as goods bearing the CONSCIOUS EATING Mark.

13. Because of the high degree of similarity between the parties' respective marks, goods, and trade channels, as well as the fame of the CONSCIOUS EATING Mark in the natural products industry, Applicant's use of the proposed CONSCIOUS COOK Mark is likely to cause consumer confusion, mistake or deception, violating Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d).

14. In addition, Applicant alleged in the Application that the proposed CONSCIOUS COOK Mark was first used in interstate commerce by Applicant as least as early as October 14, 2014, and that the mark was currently in use for all of the goods set forth in the Application.

However, upon information and belief, no valid use in interstate commerce was made for the goods set forth in the Application as of the Application filing date.

15. Applicant's failure to use the proposed CONSCIOUS COOK Mark in commerce for the goods identified in the Application as of the Application filing date renders the Application *void ab initio*.

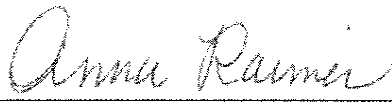
In view of the above, Applicant is not entitled to federal registration of its CONSCIOUS COOK Mark for goods in International Class 29 because Applicant's proposed use is likely to cause confusion, or to cause mistake, or to deceive, and because Applicant failed to make a valid use in commerce of the CONSCIOUS COOK Mark for all the goods identified in the Application as of the Application filing date.

WHEREFORE, for the foregoing reasons, Opposer respectfully requests that the present Opposition be sustained in favor of Opposer, and that Application Serial No. 86/588,571 be refused registration.

The appropriate fee is also submitted herewith. Please direct all future correspondence to the undersigned.

Dated: December 23, 2015

Respectfully submitted,

By: 

Anna E. Raimer
JONES DAY
717 Texas Ave., Suite 3300
Houston, Texas 77002
Telephone: 832.239.3786
Facsimile: 832.239.3600
Email: aeraimer@JonesDay.com

Attorney for Opposer
MARY'S GONE CRACKERS, INC.

CERTIFICATE OF SERVICE

It is hereby certified that a copy of the foregoing document entitled Notice of Opposition has been served upon Applicant by mailing said copy on December 23, 2015, via First Class Mail, postage prepaid at the correspondence address of record in the Patent and Trademark Office:

JASMIN BECKETT
20 WENDELL ST
HEMPSTEAD, NY 11550

/s/ Lauren Refinetti
Lauren Refinetti

EXHIBIT B

Certified Article Number

7196 9008 9111 2514 7672

SENDERS RECORD

Commissioner Trademarks
P. O. Box 1451
Alexandria, VA 22313-1451
US



To: Lauren Refinetti/JonesDay,
Cc:
Bcc:
Subject: FW: Outage - Filing Deadline

From: TEAS <TEAS@USPTO.GOV>
To: Lauren Refinetti <lrefinetti@jonesday.com>,
Date: 12/23/2015 06:35 PM
Subject: RE: Outage - Filing Deadline

Hello Lauren,

Unfortunately, the staff at this email address does not provide support for the Trademark Trial and Appeal Board's electronic filing system.

We apologize for the inconvenience of this outage. Unfortunately, it does not appear that our systems will be back online in time for you to file electronically. Accordingly, you must use an alternative method of filing in order to be timely. The outage impacted our fax systems as well, so please submit your filing via mail, and please be sure to include a certificate of mailing:

CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Commissioner for Trademarks, P.O. Box 1451, Alexandria, Virginia 22313-1451 on the date shown below:

(Typed or Printed Name of Person Signing Certificate)

(Signature)

(Date)

Please use the following addresses for filing documents:

•Trademark-Related Documents

Commissioner for Trademarks
P.O. Box 1451
Alexandria, Virginia 22313-1451

Please monitor the USPTO website for updates as to operating status: <http://www.uspto.gov/blog/ebiz/>

Please let us know if you have any further concerns.

Regards,

TEAS Support Team
United States Patent & Trademark Office
Hours: Monday-Friday 8 a.m. to 8 p.m. ET
Website: www.uspto.gov/teas

From: Lauren Refinetti [mailto:lrefinetti@jonesday.com]
Sent: Wednesday, December 23, 2015 5:27 PM
To: TEAS
Cc: Anna E Raimer; April A Augustine; LuAnn Wood
Subject: Outage - Filing Deadline

Hello,

I am writing to inform you pursuant to your website [<http://www.uspto.gov/trademarks-application-process/filing-online/filing-documents-during-outage>] that there is an outage of the TEAS site, which is preventing me from filing an opposition that is due today. The application serial number is 86588571, for CONSCIOUS COOK EAT BETTER FEEL BETTER LIVE BETTER & Design. I represent opposer Mary's Gone Crackers.

I am attaching a copy of the opposition here, and will be faxing it as well. Please let me know if this is sufficient, or if we should still file electronically once the site is back up.

Our firm has a deposit account, # 500566, code 3774.

Thank you,

Lauren Lynne Refinetti
Associate
JONES DAY® - One Firm Worldwide
2727 North Harwood Street
Dallas, TX 75201
Office +1.214.969.4889

=====
This e-mail (including any attachments) may contain information that is private, confidential, or protected by attorney-client or other privilege. If you received this e-mail in error, please delete it from your system without copying it and notify sender by reply e-mail, so that our records can be corrected.
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CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Commissioner for Trademarks, P.O. Box 1451, Alexandria, Virginia 22313-1451 on the date shown below:

LuAnn Wood

(Typed or Printed Name of Person Signing Certificate)


(Signature)

December 24, 2015

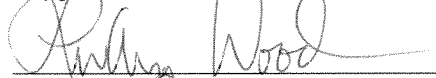
(Date)

CERTIFICATE OF TRANSMISSION

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LuAnn Wood

(Typed or Printed Name of Person Signing Certificate)



(Signature)

December 23, 2015

(Date)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE
TRADEMARK TRIAL AND APPEAL BOARD**

MARY'S GONE CRACKERS, INC.,

Opposer,

v.

JASMIN BECKETT,

Applicant.

Application Serial No.: 86/588,571

Opposition No. _____

Filing Date: April 6, 2015

Publication Date: August 25, 2015

Trademark: CONSCIOUS
COOK EAT BETTER FEEL
BETTER LIVE BETTER &
Design

International Class: 29

NOTICE OF OPPOSITION

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2. Mary's Gone Crackers has prominently and extensively promoted and advertised its award-winning products bearing the CONSCIOUS EATING Mark, expending significant resources in connection with such advertising and promotional efforts and building a valuable

business based on the high demand for its healthy, organic, gluten free, vegan baked goods sold under the CONSCIOUS EATING Mark.

3. As a result of Opposer's continuous and extensive use, advertising, and promotion of the CONSCIOUS EATING Mark, as well as the distinctiveness of the mark, the CONSCIOUS EATING Mark has become well-known, and consumers have come to recognize the CONSCIOUS EATING Mark as uniquely associated with Mary's Gone Crackers and an indication of origin.

4. Mary's Gone Crackers has a valid and incontestable U.S. trademark registration, Reg. No. 3525460, for its CONSCIOUS EATING Mark in Class 30, for "baked goods, namely, cookies, crackers, cracker crumbs," as well as an application for the mark, Serial No. 86/560,845, in Class 30 for "pretzels."

5. Trademark Application Serial No. 86/588,571 (the "Application") filed by Jasmin Beckett ("Applicant"), an individual with an address of 20 Wendell Street, Hempstead, NY 11550, seeks registration of the CONSCIOUS COOK Mark.

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11. In addition, the goods identified in the Application are related to the goods sold by Opposer under its CONSCIOUS EATING Mark and covered by Opposer's trademark registration for the CONSCIOUS EATING Mark.

12. The goods identified in the Application are also likely to be sold to the same or overlapping classes of purchasers and trade channels as goods bearing the CONSCIOUS EATING Mark.

13. Because of the high degree of similarity between the parties' respective marks, goods, and trade channels, as well as the fame of the CONSCIOUS EATING Mark in the natural products industry, Applicant's use of the proposed CONSCIOUS COOK Mark is likely to cause consumer confusion, mistake or deception, violating Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d).

14. In addition, Applicant alleged in the Application that the proposed CONSCIOUS COOK Mark was first used in interstate commerce by Applicant as least as early as October 14, 2014, and that the mark was currently in use for all of the goods set forth in the Application.

However, upon information and belief, no valid use in interstate commerce was made for the goods set forth in the Application as of the Application filing date.

15. Applicant's failure to use the proposed CONSCIOUS COOK Mark in commerce for the goods identified in the Application as of the Application filing date renders the Application *void ab initio*.

In view of the above, Applicant is not entitled to federal registration of its CONSCIOUS COOK Mark for goods in International Class 29 because Applicant's proposed use is likely to cause confusion, or to cause mistake, or to deceive, and because Applicant failed to make a valid use in commerce of the CONSCIOUS COOK Mark for all the goods identified in the Application as of the Application filing date.

WHEREFORE, for the foregoing reasons, Opposer respectfully requests that the present Opposition be sustained in favor of Opposer, and that Application Serial No. 86/588,571 be refused registration.

The appropriate fee is also submitted herewith. Please direct all future correspondence to the undersigned.

Dated: December 23, 2015

Respectfully submitted,

By: Anna Raimer

Anna E. Raimer
JONES DAY
717 Texas Ave., Suite 3300
Houston, Texas 77002
Telephone: 832.239.3786
Facsimile: 832.239.3600
Email: aeraimer@JonesDay.com

Attorney for Opposer
MARY'S GONE CRACKERS, INC.

CERTIFICATE OF SERVICE

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JASMIN BECKETT
20 WENDELL ST
HEMPSTEAD, NY 11550

/s/ Lauren Refinetti
Lauren Refinetti

EXHIBIT C

7196 9008 9111 2514 7672

Page 1

TO:

Commissioner Trademarks
P. O. Box 1451
Alexandria, VA 22313-1451
US

SENDER:

JP016216, 121225-605018

REFERENCE:



PS Form 3800, January 2005

RETURN RECEIPT SERVICE	Postage	3.45
	Certified Fee	2.80
	Return Receipt Fee	0.00
	Restricted Delivery	
	Total Postage & Fees	

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